

Supreme Court, U. S.  
FILED

SEP 16 1977

MICHAEL RODAK, JR., CLERK

---

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1976

---

**No. 76-1371**

---

SEABOARD COAST LINE RAILROAD COMPANY, *Petitioner*

v.

OCCUPATIONAL SAFETY AND HEALTH REVIEW  
COMMISSION et al, *Respondents*

---

On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Fifth Circuit

---

**PETITIONER'S SUPPLEMENTAL BRIEF**

---

MALCOLM MACLEAN  
F. SAUNDERS ALDRIDGE, III  
Post Office Box 9848  
Savannah, Georgia 31402

*Of Counsel:*

*Attorneys for Petitioner*

JOHN W. WELDON  
EDWARD A. CHARRON  
500 Water Street  
Jacksonville, Florida 32202

September 1977

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1976

---

No. 76-1371

---

SEABOARD COAST LINE RAILROAD COMPANY, *Petitioner*  
v.  
OCCUPATIONAL SAFETY AND HEALTH REVIEW  
COMMISSION et al, *Respondents*

---

On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Fifth Circuit

---

**PETITIONER'S SUPPLEMENTAL BRIEF**

---

**I. TEAMSTERS v. UNITED STATES.**

Your petitioner, Seaboard Coast Line Railroad Company, requests that a jurisdictional exception to coverage of the Occupational Safety and Health Act of 1970<sup>1</sup> [OSHA] be enforced according to Congressional mandate. At the present time each of three con-

---

<sup>1</sup> 29 U.S.C. §§ 651 et seq.

flicting and unworkable interpretations<sup>1</sup> of OSHA section 4(b)(1)<sup>2</sup> extends statutory coverage beyond the boundaries which Congress established.

This Court recently corrected a similar disregard for Congressional intent in *Teamsters v. United States*.<sup>3</sup> As in *Teamsters*, these proceedings involve an exception to coverage of remedial legislation which the lower Courts have read out of the statute.

Of course, *Teamsters* examined section 703(h) of the Title VII<sup>4</sup> which provides an exemption for bona fide seniority systems. Several lower Courts had concluded that to give effect to the exemption would be in contravention of the Title VII goal to prohibit discrimination in employment. Thus the exemption was eliminated by interpretation based on rationalization that no seniority system could be bona fide which perpetuated the effects of pre Title VII discrimination.

In *Teamsters*, this Court examined the legislative history of Title VII which reflects a Congressional concern with the effect of the legislation on seniority rights and a desire to protect the stability in labor relations deriving from the operation of seniority systems.<sup>5</sup> The resultant extension of a measure of immu-

<sup>1</sup> SCL's Petition at pages 6 and 7 discusses Occupational Safety and Health Review Commission Chairman Barnako's January 1977 comments to this effect.

<sup>2</sup> 29 U.S.C. § 653(b)(1).

<sup>3</sup> Nos. 75-636 & 75-672, — U.S. —, 52 L.Ed. 2d 596 (May 31, 1977) as supplemented by *Trans World Airlines, Inc. v. Hardison*, Nos. 75-1126 & 75-1385, — U.S. —, 53 L.Ed. 2d 113 (June 20, 1977).

<sup>4</sup> 42 U.S.C. § 2000e-2h.

<sup>5</sup> As Mr. Justice White noted in the June 20 decision of *Trans-*

nity from Title VII coverage through section 703(h) is reflective of the inescapable conclusion that "Congress did not intend to make it illegal for employees with vested seniority rights to continue to exercise those rights, even at the expense of pre-Act discriminatees."<sup>6</sup> That the statutory exemption may have discriminatory consequences<sup>7</sup> seemingly in contravention of Title VII's general purpose of eliminating discrimination in employment is not a matter for concern. Congress granted the immunity, the legislative history reflects the intent to do so and therefore the coverage of Title VII does not extend to bona fide seniority systems.

The matters now presented to this Court are strikingly similar to those examined in *Teamsters*. At issue is section 4(b)(1) of OSHA which provides:

Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.<sup>8</sup>

---

*World Airways, Inc. v. Hardison*, — U.S. —, 53 L.Ed. 2d 113, 128:

Collective bargaining, aimed at effecting workable and enforceable agreements between management and labor, lies at the core of our national labor policy, and seniority provisions are universally included in these contracts.

<sup>6</sup> *Teamsters v. United States*, — U.S. —, 526 L.Ed. 2d at 426.

<sup>7</sup> "... Absent a discriminatory purpose, the operation of a seniority system cannot be an unlawful employment practice even if it has discriminatory consequences." *TransWorld Airways, Inc. v. Hardison*, — U.S. —, 53 L.Ed. 2d 113, 130.

<sup>8</sup> 29 U.S.C. § 653(b)(1).

The legislative history of OSHA amply documents the Congressional intent to exclude from OSHA coverage those industries regulated under other federal safety and health legislation.<sup>10</sup> Nevertheless, the Court below held that to view section 4(b)(1) as an industry-wide exemption would be inconsistent with the announced statutory purpose "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."<sup>11</sup> The Court below effectively 'disembowels' the exemption by adopting a confusing and unworkable standard by standard formula for jurisdictional demarcation.

It is just such a myopic view which this Court corrected in *Teamsters*. Congressional concern for OSHA's effect on those industries which are subject to more specialized regulation<sup>12</sup> is no less evident than Congressional concern for Title VII's effect on seniority systems. The exemption from Title VII applies to seniority systems unless there is intentional discrimination. Similarly, OSHA does not apply to otherwise regulated industries unless another federal agency "completely abrogates"<sup>13</sup> its duty to apply its specialized expertise. There is no requirement that the regulation of a specific industry be as comprehensive

<sup>10</sup> SCL's Petition at pages 14 to 20.

<sup>11</sup> SCL's Petition at Appendix, p. 7a, 539 F.2d at 391, quoting 29 U.S.C. § 651(b).

<sup>12</sup> Cf. *Teamsters v. United States*, — U.S. at —, 52 L.Ed. 2d at 426.

<sup>13</sup> SCL's Petition at 14 to 20.

<sup>14</sup> SCL's Petition at 18 quotes an extract from the legislative history to this effect.

or detailed as that under OSHA<sup>15</sup> and its holding to the contrary constituted error in the Court below.

## 2. PRESIDENTIAL TASK FORCE.

On August 5, 1977, President Carter joined the effort to curtail the unreasonable excesses of the Occupational Safety and Health Administration by appointing an interagency task force on worker safety and health protection. The President noted that the task force will supplement two recent intra-agency efforts to redirect resources away from trivial problems and to eliminate unnecessary burdens. In pursuing the Presidential goal of ensuring that federal programs actually reduce threats and "help employers make the necessary adjustments", it is significant that the main thrust of the task force's evaluation of present programs will be "investigation of duplication, overlap, and gaps in Federal agency jurisdiction." Initial recommendations for action will be presented to the President by April 30, 1978. The announcement appears at 42 Fed. Reg. No. 153 (Aug. 9, 1977).

This action is further evidence that duplicative and overlapping jurisdictions are an anathema to the national regulatory policy and that until quite recently, the Occupational Safety and Health Administration recognized no limits to its random and undisciplined assertion of authority. Accordingly, that agency could not be expected to fairly assess jurisdictional bound-

<sup>15</sup> Had Congress intended to impose such a requirement, it would have used language akin to that in section 4(b)(2), whereby certain preexisting standards "are superseded on the effective date of corresponding standards promulgated under this chapter" 29 U.S.C. § 653(b)(2). See SCL's Petition at 19.

aries imposed by Congress and its interpretation is not entitled to deference. Rather, this Court should correct the error below and enforce the Congressional mandate that OSHA does not apply to the railroad industry because the Federal Railroad Administration has exercised its statutory authority albeit with deliberateness and foresight.

Respectfully submitted,

MALCOLM MACLEAN  
F. SAUNDERS ALDRIDGE, III  
Post Office Box 9848  
Savannah, Georgia 31402  
*Attorneys for Petitioner*

*Of Counsel:*

HUNTER, HOULIHAN, MACLEAN,  
EXLEY, DUNN & CONNERAT, P.C.  
Post Office Box 9848  
Savannah, Georgia 31402

JOHN W. WELDON  
EDWARD A. CHARRON  
500 Water Street  
- Jacksonville, Florida 32202

September 1977

0

6

0

7

4

1

e

e

s